

Ream v. United States
C17-1141 RAJ

Court's Rulings on Ream's Objections to the United States' Deposition Designations (Dkt. ## 46, 48)

Robert Wolinsky

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
26:23-28:3	Hearsay within hearsay	ER 803 – certified medical record, kept in regular course of business, regular practice to record observations of patients in course of functional capacity evaluation.	OVERRULED
Exhibits 1 and 2	Hearsay, which does not come under the medical records exception, which are not "reasonably pertinent" to medical diagnosis or treatment. This was a mandatory referral by an insurance company. It is also cumulative of the testimony	ER 803 – certified records of functional capacity evaluation (FCE) ordered by Plaintiff's treating physician, Dr. Jason Garber, after reaching maximum medical improvement, for purposes of determining work restrictions; Dr. Garber relied upon FCE in determining work restrictions, a material issue before the Court relating to Plaintiff's wage loss claims.	OVERRULED

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
	itself, which simply goes over the report.		

Tyree Charlton

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
31:9-3-32:13	Hearsay	ER 803 – certified medical record, kept in regular course of business, regular practice to record observations of patients such as inconsistencies in presentation	OVERRULED
38:25-40:12	Hearsay and speculation as to the statements, intent and thought processes of another person	ER 803 – certified medical record, kept in regular course of business, regular practice to record observations of patients such as inconsistencies in presentation	OVERRULED
40:18-45:2	Hearsay and speculation as to the statements, intent and thought processes of another person	ER 803 – certified medical record, kept in regular course of business, regular practice to record observations of patients such as inconsistencies in presentation.	OVERRULED

Court's Rulings on the Parties' Objections to Ream's Deposition Designations (Dkt. # 47, 49)

Jessica Chiovaro

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
56:2-11	Lack of foundation; ER 401, ER 602, ER 701	The witness has ample foundation and qualifications to offer this opinion. See, e.g., 56:8-11; 56:20-57:1; 53:1-55:12; 7:18-12:19.	OVERRULED

Jamie N. Gamez

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
16:12-13	Lack of foundation; relevance; speculation ER 403; ER 602; ER 702	The reasonable value of plaintiff's medical services is relevant to her damages. See WPI 30.07.01. The testimony is in no way unfairly prejudicial, confusing, or wasteful. Ms. Gamez testified to both her foundation and credentials extensively during the depositions. See Tr. 8:6-11:14 (qualifications); 11:15-15:3 (foundation).	OVERRULED
16:21-24	Lack of foundation as to "reasonable" ER 403; ER 602; ER 702	Plaintiff's medical damages are a relevant issue in the case, and in no way unfairly prejudicial, confusing, or wasteful. Ms. Gamez testified to both her foundation and credentials extensively during the depositions. See Tr. 8:6-11:14 (qualifications); Tr. 11:15-15:3 (foundation). Ms. Gamez further laid the specific foundation required to offer the summary. Tr. 15:21-16:8.	OVERRULED

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17:3	Lack of foundation for opinions ER 403; ER 602; ER 702	The question was whether the opinions are on a more probable than not basis. The witness testified that they were. This is not a question, in itself, requiring foundation, nor does it implicate Rule 403. As for the underlying opinions, Ms. Gamez testified to both her foundation and credentials extensively during the depositions. See Tr. 8:6-11:14 (qualifications); Tr. 11:15-15:3 (foundation)..	OVERRULED
26:1-4	Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC</i> , 77179-5-I, 2019 WL 2083307, at *6 (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference.	Cross-exam on expert's methodology and credibility; does not implicate collateral source rule, but questions expert's conclusion that total charge is best, or only, indication of value of service.	OVERRULED
26:22-25	Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC</i> , 77179-5-I,	Plaintiff's objection is overbroad reading of collateral source rule, which does not preclude cross-examination of foundation, methodology or credibility of witness's opinion, but rather bars only evidence of payments made for Plaintiff's benefit. Pages 26-29 include foundational	OVERRULED

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	2019 WL 2083307, at *6 (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference. (Standing objection to collateral source made and agreed to)	questions for expert's opinion and do not include evidence of any payments made on Plaintiff's behalf.	
27:12-15	Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC</i> , 77179-5-I, 2019 WL 2083307, at *6 (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference.	Cross-exam on expert's methodology and credibility; does not implicate collateral source rule, but questions expert's conclusion that total charge is best, or only, indication of value of service.	OVERRULED

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29:19-21	<p>Per standing objection: Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC</i>, 77179-5-I, 2019 WL 2083307, at *6 (Wash. Ct. App. May 13, 2019).</p> <p>Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference.</p>	Cross-examination on foundations of expert's methodology, credibility and opinion. Does not include any evidence of payments made on Plaintiff's behalf.	OVERRULED
36:4-5	<p>What was paid or credited, and by whom, is not relevant and collateral source. <i>See Rule 401; 403; see also Gerlach v. Cove Apartments, LLC</i>, 77179-5-I, 2019 WL 2083307, at *6</p>	Cross-examination on credibility of expert's opinion, based upon lack of knowledge or inquiry of credits, loans and discounts applied to medical bills. Limited only to certain bills, which reflect questionable reductions. Collateral source not implicated as expert did not know reason for any credits, loans, or discounts applied..	OVERRULED

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	(Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference.		
42:22-43:13	Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC, 77179-5-I, 2019 WL 2083307, at *6</i> (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference..	Cross-examination on credibility of expert's opinion, based upon lack of knowledge or inquiry of discounts applied to bill. Collateral source not implicated as expert did not know reason for any credits, loans, or discounts applied.	OVERRULED
42:22-43:13	Collateral source, Rule 401; 403; <i>see also Gerlach v. Cove Apartments, LLC, 77179-5-I, 2019 WL</i>	Cross-examination on credibility of expert's opinion, based upon lack of knowledge or inquiry of discounts applied to bill. Collateral source not implicated as expert did not know reason for any credits, loans, or discounts applied.	OVERRULED

PAGE / LINE	NATURE OF OBJECTION	RESPONSE	COURT'S RULING
	2083307, at *6 (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference..		
59:15-60:25	Collateral source, Rule 401; 403; see also <i>Gerlach v. Cove Apartments</i> , LLC, 77179-5-I, 2019 WL 2083307, at *6 (Wash. Ct. App. May 13, 2019). Plaintiff respectfully incorporates her bench brief (dkt. 27) by reference.	Cross-examination as to credibility of expert's opinion when including charges for Plaintiff's retained expert..	OVERRULED
67:12	Lack of foundation as to "reasonable charge" ER 403; ER 602; ER 702.	Ms. Gamez testified to both her foundation and credentials extensively during the depositions. See Tr. 8:6-11:14 (qualifications); 11:15-15:3 (foundation). Her clarification of a math error is both relevant and consistent with Rule 403...	OVERRULED

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68:11	Lack of foundation as to any other expert reports ER 403; ER 602.	What the witness has, and has not, reviewed in forming opinions is relevant and appropriate testimony.	OVERRULED
68:15	Lack of foundation as to any other expert reports ER 403; ER 602.	What the witness has, and has not, reviewed in forming opinions is relevant and appropriate testimony.	OVERRULED
69:13-70:1	Collateral source, relevance, facts not in evidence, foundation, and Rule 403.	Exhibits referenced were offered into evidence by Plaintiff; questions go to credibility of expert opinion as to credits, duplicative services, discounts, and reversals when expert had no knowledge and made no inquiry of same on bills..	OVERRULED